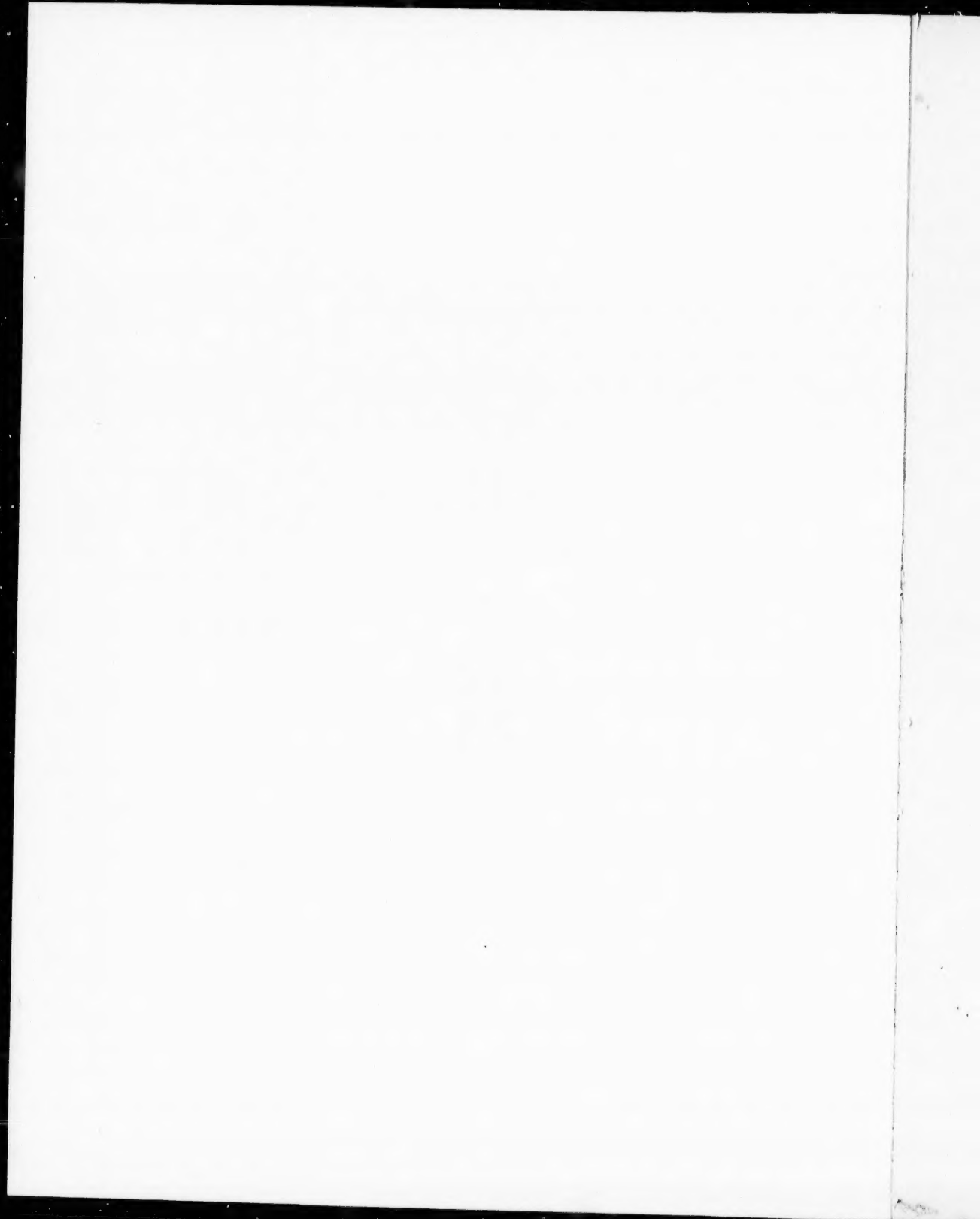




MUNICIPAL ELECTION REGULATIONS.

ORDER OF COURT.

CONSTITUTING

GENERAL RULES (AD INTERIM)

FOR THE

EFFECTUAL EXECUTION OF THE VICTORIA MUNICIPAL CORPORATION ORDINANCE, 1867, AND OTHER
THE LAWS FOR THE TIME BEING REGULATING MUNICIPAL ELECTIONS.

MADE BY

THE HON. MATTHEW BAILLIE BEGBIE, Chief Justice of the Supreme Court;
HON. HENRY P. PELLEW CREASE, one of the Justices of the Supreme Court; and
HON. JOHN HAMILTON GRAY, one of the Justices of the Supreme Court.

WHEREAS under section 25 of the Victoria Municipal Corporation Ordinance, 1867, power is given to a Judge of the Supreme Court, "from time to time to make rules for the trial of election petitions under the said Ordinance, and the matters and things connected therewith." IT IS HEREBY ORDERED under and by virtue of the authority of the said Ordinance, and all other Acts regulating for the time being Municipal Elections, and under and by virtue of all powers and authorities, them and every of them the said Judges in that behalf enabling that the following shall be and are hereby made Rules for the time being for regulating the trial of Election Petitions under the said Victoria Municipal Corporation Ordinance, 1867, and all and singular the Acts and laws which shall for the time being, be in force creating or regulating or respecting municipalities and Municipal Elections in the Province of British Columbia or any part thereof.

1. The presentation of a Municipal Election shall be made by leaving it at the office of the Registrar of the Supreme Court, and such Registrar or his Deputy shall (if required) give a receipt, which may be in the following form:—

Received on the _____ day of _____ at the Registrar's office, a petition touching the election of A. B., alderman, councillor [&c., as the case may be], for the _____ of _____ purporting to be signed by [insert the names of petitioners].

C. D. Registrar, or Deputy Registrar.

With the petition shall also be left a copy thereof for the Registrar to send to the clerk of the Municipality with the petition.

2. A municipal election petition shall contain the following statements:—

(1.) It shall state the right of the petitioner or petitioners to petition within the "Victoria Municipal Corporation Ordinance, 1867," or other the law for the time being regulating Municipal Elections.

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the Court or a Judge at chambers.

4. The petition shall conclude with a prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be sufficient:—

In the Supreme Court of British Columbia.

The Victoria Municipal Corporation Ordinance, 1867, (or other the law regulating Elections.)
 Election for [state the place and office for which election held] holden on the _____ day of _____ A.D.
 The petition of A., of _____ [or of A., of _____, and B., of _____, as the case may be] whose names are sub-
 scribed.

1. Your petitioner, A., is a person who voted [or had a right to vote, as the case may be], at the above election [or was a candidate at the above election]; and your petitioner B. [here state in like manner the right of each petitioner].

2. And your petitioners state that the election was holden on the _____ day of _____ A.D., when A. B., C. D., and E. F., were candidates, and that A. B. and C. D. have been in the usual manner declared to be duly elected.

3. And your petitioners say that [here state the facts and grounds on which the petitioners rely]
 Wherefore your petitioners pray that it may be determined that the said A. B. was not duly elected, and that the election was void [or that the said E. F. was duly elected and ought to have been returned, or as the case may be].

(Signed)

A.

B.

6. Evidence need not be stated in the petition, but the Court or a Judge at chambers may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial, in the same way as in ordinary proceedings in the Supreme Court, and upon such terms as to costs and otherwise as may be ordered.

7. When the petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, unless the grounds of his application be satisfactorily set forth in his petition six days before the day appointed for trial, or within such time as may be appointed in that behalf by the Court or a Judge thereof, deliver to the Registrar or his Deputy, and also at the address, if any given by the petitioners and respondent, as the case may be, the petition containing such charges a list of votes or class of votes intended to be objected to as may be, and of the heads or grounds of objection to any such vote or class of votes, and the Registrar or his Deputy shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote or class of votes, nor upon any head of objection not specified in the list, except by leave of the Supreme Court, or a Judge at Chambers, upon such terms as to amendment of the list, postponement of the inquiry, and payment of the costs, as may be ordered.

8. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, under the Victoria Municipal Incorporation Ordinance 1867, (or as the case may be), such respondent, or such petitioner, shall six days (or such other time as shall be reasonably appointed by the Court or a Judge thereof), before the day appointed for trial, deliver to the Registrar, and also at the address, if any given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Registrar shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Court, or a Judge at chambers, upon such terms as to amendments of the list, postponement of the inquiry, and payment of the costs, as may be ordered.

9. With the petition petitioners shall leave at the office of the Registrar a writing, signed by them or on their behalf, giving the name of some person entitled to practice as an attorney in the Supreme Court, whom they authorize to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address within three miles from the Post Office, at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings may be given by sticking up the same at the Registrar's office.

10. Any person elected to any municipal office may at any time after he is elected send or leave at the office of the Registrar a writing, signed by him or on his behalf, appointing a person entitled to practice as an attorney in the Supreme Court, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Registrar's office.

11. The Registrar shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The Registrar shall, upon the presentation of the petition forthwith, as soon as conveyance may be had, send a copy of the petition to the town clerk, and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation, or such further or other time as the Judge in his discretion may appoint.

14. When the respondent has named an agent or given his address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered or may reasonably be presumed to have been delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless the Judge at chambers on an application made to him on affidavit not later than five days after the petition is presented, or such extended time as may be ordered, shewing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the Judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

15. In case of evasion of service the sticking up a notice in the office of the Registrar or advertisement in such newspaper as shall be ordered, of the petition having been presented stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a Judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Provincial Treasury to an account to be opened there by the description of the Security Fund, which shall be vested in and drawn upon from time to time by the Court or Judge thereof, for the purposes for which security is required by the said Act, and an office receipt or certificate for the same shall be forthwith left at the Registrar's office.

17. The Registrar shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. The recognizance as security for costs may be acknowledged before a Judge at chambers or the Registrar or his Deputy in town, or a Justice of the Peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

19. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the _____ day of _____, in the year of our Lord 18____, before me [name and description] came A. B., of [name and description as above prescribed] and acknowledged himself [or severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred dollars [or the following sums, (that is to say) the said C. D. the sum of \$____, the said E. F. the sum of \$____, the said G. H. the sum of \$____, and the said J. K. the sum of \$____], to be levied on his [or their respective] goods and chattels, land and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if [here insert the names of all the petitioners, and if more than one add, or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [or them] relating to the [here insert the name of the municipality] which shall become payable by the petitioner [or petitioners, or any of them] under the Victoria Municipal Corporation Ordinance, 1867, [as the case may be], to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Taken and acknowledged by the above-named [name of sureties] on the _____ day of _____ at _____, before me, _____ C. D.

A Justice of the Peace [or as the case may be.]

20. The recognizance or recognizances shall be left at the Registrar's office, by or on behalf of the petitioner, in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

21. The time for giving notice of any objection to a recognizance shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or such further time as shall be specially ordered by the Judge.

22. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

23. Any objection made to the security shall be heard and decided by the Registrar, subject to appeal within five days or at the expiration of such further time so specially allowed as aforesaid, to a Judge upon summons taken out by either party to declare the security sufficient or insufficient.

24. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Registrar, or Judge may think fit.

25. If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the Act, and the petition shall be at issue.

26. If by order made upon such summons an objection be allowed and the security be declared insufficient, the Registrar or Judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, or such further time as shall be specially ordered, and such deposit shall be made in the manner already prescribed.

27. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Registrar or Judge, and in default of such order shall form part of the general costs of the petition.

28. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Registrar there be also left with the Registrar an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the Supreme Court, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:—

In the Supreme Court.

Victoria Municipal Corporation Ordinance, 1867, [or other the Act regulating Municipal Elections].

I, A. B., of [as in recognizance] make oath and say that I am seised or possessed of real [or personal] estate above what will satisfy my debts, of the clear value of \$

Sworn, &c.

29. The order of the Registrar for payment of costs shall have the same force as an order made by a Judge, and may be made a rule of the Supreme Court and enforced in like manner as a Judge's order. The general costs of the Petition shall be the costs payable in a case at nisi prices or as near thereto as the Registrar or an appeal by summons, the Judge in his discretion shall prescribe.

30. The time of the trial of each municipal election petition shall be fixed by the Judge or any one of them, who shall signify the same to the Registrar and notice thereof shall be given in writing by the Registrar by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the municipality to which the petition relates, with or without an advertisement in some local newspaper or by advertisement alone at discretion of the Judge, a reasonable time before the day appointed for the trial.

31. The sticking up of the notice of trial at the office of the Registrar or the publication by order in a newspaper, shall be deemed and taken to be notice in the prescribed manner within the meaning of the ordinance, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

32. The notice of trial may be in the following form:—

Victoria Municipal Corporation Ordinance, 1867, [or other Act regulating Election Petitions].

Election petition of

Municipality of

Take notice that the above petition [or petitions] will be tried at

on the day of and on such

other subsequent days as may be needful.

Dated the day of

Signed by order,

A. B.,

Registrar or Deputy Registrar.

33. A Judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the Judge may direct, to be sent to the clerk of the Municipality, postpone the beginning of the trial to such day he may name.

34. In the event of the Judge before whom the trial of the petition is to take place not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall ipso facto stand adjourned to the ensuing day, at 11 of the clock a. m., and so from day to day.

35. No formal adjournment of the Court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

36. A special case may be stated upon which the petition may be heard and decided. The application to state a special case may be made by rule in the Supreme Court when sitting, or by a summons before a Judge at Chambers, upon hearing the parties.

37. The title of the Court held for the trial of a municipal election petition, may be as follows:—
 "Supreme Court of British Columbia,"

and it shall be sufficient so to entitle all proceedings in that Court.

38. An officer may be appointed for the time being for each Court for the trial of a municipal election petition by the Judges or any of them; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may act as the Registrar of that Court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the office of a Court of Record, and also such duties as may be prescribed to him.

39. The reasonable costs of any witness shall be ascertained by the Registrar, and the certificate allowed them shall be under his hand, unless the Court shall otherwise order.

40. The order of the Court to compel the attendance of a person as a witness may be in the following form:—
 "Supreme Court" in the matter of the trial of Municipal Election Petition [briefly describe] the day of

To A. B. [describe the person]. You are hereby required to attend before the above Court at [place] on day of at the hour of [or forthwith, as the case may be], to be examined as a witness in the matter of the said petition, and to attend the said Court, until your examination shall have been completed.

A. B., Registrar or Judge.

41. In the event of its being necessary to commit any person for contempt, the warrant may be as follows:—

At a sitting of the Supreme Court holden on at for the trial of a municipal election petition for the municipality of before A. B., a Judge of this Court, pursuant to the Victoria Municipal Corporation Ordinance, 1867, [or other the Act regulating Municipal Elections].

Whereas C. D. has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof. The said Court does therefore sentence the said C. D. for his said contempt to be imprisoned in the

gaol for calendar months [or as may be], and to pay to our Lady the Queen, a fine of \$, and to be further imprisoned in the said gaol until the said fine be paid, and

the Court further orders that the Sheriff [if any, or as the case may be], and all constables and officers of the peace of any county, district, municipality or place where the said C. D. may be found, shall take the said C. D. into custody and convey him to the said gaol, and there deliver him into the custody of the

gaoler thereof, to undergo his said sentence; and the Court further orders the said gaoler to receive the said C. D. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed the day of

A. B.

A. B.

42. Such warrant may be made out and directed to the Sheriff or other person having the execution of process of the Supreme Court, as the case may be, and to all constables and officers of the peace of the district, municipality or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

43. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a Supreme Court Judge, who shall have the same control over the proceedings under the Victoria Municipal Corporation Ordinance, 1867, [or other the law which shall for the time being regulate municipal elections or petitions] as a Judge at Chambers in the ordinary proceedings of the said Court, and such questions and matters shall be heard and disposed of by any Judge at chambers.

44. No petition shall be withdrawn by collusion or without the special leave of the Judge upon an application by affidavit and reasonable cause first shown and as to costs and otherwise subject to such conditions, as he in his discretion shall deem just. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

Victoria Municipal Corporation Ordinance 1867, [or other the law regulating Municipal Election Petitions.] Municipality of Petition of [state petitioners] presented day of

The petitioner proposes to apply to withdraw his petition upon the following ground [here state the ground,] and prays that a day may be appointed for hearing his application.

Dated this day of

(Signed)

45. The notice of application for leave to withdraw shall be left at the Registrar's office.

46. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the clerk of the municipality, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice, or to the like effect:—
 In the Election Petition for _____ in which _____ is petitioner and respondent.
 Notice is hereby given, that the above petitioner has on the _____ day of _____ lodged at the Registrar's office notice of an application to withdraw the petition, of which notice the following is a copy [set it out].
 And take notice that by the rule made by the Judge or Judges, any person who might have been a petitioner in respect of the said election may, within five days [or as the case may be], after publication by the clerk of the municipality of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

47. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days or within such further time as shall be ordered after such notice is published by the returning officer, give notice, in writing, signed by him on his behalf, to the Registrar, of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

48. The time and place for hearing the application shall be fixed by a Judge, but shall not be less than a week after the notice of the intention to apply has been given to the Registrar as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Registrar of an intention to apply to be substituted as petitioners, and otherwise in such manner and in such time as the Judge directs.

49. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the Court or a Judge at chambers, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such other time as upon consideration of any special circumstances the Court or a Judge at chambers may allow.

50. If the respondent dies, any person entitled to be a petitioner under the Ordinance or Act in respect of the election to which the petition relates may give notice of the fact in the municipality by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Registrar.

51. The manner and time of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Registrar, signed by the respondents, at any time before the day appointed for trial.

52. Upon such notice being left at the Registrar's office, the Registrar shall forthwith send a copy thereof by the post or otherwise to the petitioner or his agent, and to the town clerk.

53. The time for applying to be admitted as a respondent, shall be within ten days after such notice is given as hereinbefore directed, or such other time as the Court or Judge at chambers may allow.

54. Costs shall be taxed by the Registrar, upon the rule of Court or Judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of Court ordering them to be paid; or, if payable by the order of a Judge, then by making such order a rule of Court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or, in case there be money in the Treasury or a Bank available for the purpose, then to the extent of such money by order of the Court or a Judge thereof upon a duplicate of the Rule of Court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under all Acts for the time being regulating Municipal Election Petitions, and these Rules, or any amendments or substitutes therefor respectively, shall be the same as those payable, if any, for like proceedings according to the present practice of the Supreme Court in nisi prius cases.

55. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Registrar, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

56. No proceeding under the Victoria Municipal Corporation Ordinance, 1867, or any other Acts which shall for the time being regulate Municipal Election Petitions, shall be defeated by any formal objection.

57. Any Rule, or any variation or amendment thereof, made or to be made in pursuance of such Ordinance or Acts, shall be published in the Government Gazette or such other way as may from time to time be prescribed by the Court or a Judge thereof.

58. All matters herein prescribed to be done by or before the Registrar of the Court, may be made or done by or before the Deputy Registrar, and have the same force and validity, and be enforced and enforceable in an exactly similar manner.

59. All matters and things relating to the trial of Municipal Election Petitions, and the practice and procedure respecting such petitions shall be had, made and done as in ordinary cases, in and before the Supreme Court or the respective Judges thereof.

60. In addition to the ordinary modes of taking evidence, evidence may be taken by Commission de bene esse on the trial of an election petition upon reasonable cause shown upon affidavit to the satisfaction of the Court or a Judge thereof.

These Rules shall apply so far as practicable mutatis mutandis to any law which shall hereafter be passed for the regulation of the trial of Municipal Election Petitions, and shall be valid and of full authority until the further Order of this Court, and so far as any such further Order, Rules or Regulations shall not have repealed, varied or amended the same or any of them.

HENRY P. PELLEW CREASE, J.

JOHN HAMILTON GRAY, J.

Supreme Court, 10th March, 1875.